

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

DAVID MICHAEL IRWIN

Crim. No. 06-0290


MEMORANDUM ORDER

Shortly after President Obama signed the Fair Sentencing Act of 2010, defendant, David Michael Irwin, filed a paper captioned "Petition for Reduction in Sentencing under Fair Sentencing Act H.B. 1789 in Accordance with § 3553(a)". In short, Irwin asks the court to modify his 78 month sentence of incarceration, presumably to the statutory mandatory minimum sentence of 60 months imprisonment, although he does not seek any specific modified sentence in his papers.

Irwin was sentenced in July of 2008, before the Fair Sentencing Act of 2010 was signed into law, but after the directive of Booker was issued. Irwin argued at sentencing that he qualified for a downward variance under the §3553 factors from his recommended Guidelines sentence of 78 to 97 months imprisonment, to the statutory mandatory minimum sentence of 60 months. The court declined to vary and sentenced Irwin within his recommended Guidelines range. Irwin did not appeal this sentence.

The circumstances under which a court may modify a final sentence are limited. 18 U.S.C. § 3582. No such circumstance applies here. Irwin is correct that he would be subjected to a lesser sentence under the Fair Sentencing Act of 2010, and the attendant emergency amendments to the Sentencing Guidelines. By the court's calculation, under the emergency amendments, Irwin's recommended Guidelines range would be 41 to 51 months imprisonment, rather than 78 to 97 months imprisonment. Nevertheless, he would remain subject to the mandatory statutory minimum sentence of 60 months imprisonment. However, the emergency amendments to section 2D1.1 of the Sentencing Guidelines were not made retroactive in accordance with the requirements of section 3582(c)(2). See, Supplement to the 2010 Guidelines Manual, Amend. 748. As such, those emergency amendments cannot be applied to Irwin, whose sentence has been final for two years.

WHEREFORE, IT IS HEREBY ORDERED this 20th day of December, 2010, that Irwin's Petition for Reduction in Sentencing [Doc. No. 71] is DENIED.

 C.J.

cc: All Counsel of Record
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